

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Azmitia	Team: Squad #3	CCRB Case #: 201807685	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 09/06/2018 6:45 PM	Location of Incident: Front of 2383 2nd Avenue; Inside the PSA 5 stationhouse	Precinct: 25	18 Mo. SOL 3/6/2020	EO SOL 3/6/2020	
Date/Time CV Reported Thu, 09/06/2018 6:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/17/2018 11:07 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Fernando Dominguez	11045	960471	PSA 5
2. DTS Lorraine Marin	7456	937912	YTH SD
3. POM Riguel Rodriguez	12375	965845	PSA 5
4. Officers			
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Kerrissa Michael	03075	928780	YTH SD

Officer(s)	Allegation	Investigator Recommendation
A.POM Fernando Dominguez	Force: In front of 2383 2nd Avenue in Manhattan, Police Officer Fernando Dominguez used physical force against § 87(2)(b)	
B.POM Riguel Rodriguez	Force: In front of 2383 2nd Avenue in Manhattan, Police Officer Riguel Rodriguez used physical force against § 87(2)(b)	
C.DTS Lorraine Marin	Force: In front of 2383 2nd Avenue in Manhattan, Detective Lorraine Marin used physical force against § 87(2)(b)	
D. An officer	Force: In front of 2383 2nd Avenue in Manhattan, an officer used physical force against § 87(2)(b)	
E.DTS Lorraine Marin	Abuse: In front of 2383 2nd Avenue in Manhattan, Detective Lorraine Marin threatened to arrest § 87(2)(b)	
F.POM Fernando Dominguez	Abuse: In front of 2383 2nd Avenue in Manhattan, Police Officer Fernando Dominguez threatened to arrest § 87(2)(b)	
G.DTS Lorraine Marin	Abuse: In front of 2383 2nd Avenue in Manhattan, Detective Lorraine Marin interfered with § 87(2)(b)'s use of a recording device.	
H. Officers	Abuse: At the PSA 5 stationhouse, officers refused to provide their names to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I. Officers	Abuse: At the PSA 5 stationhouse, officers refused to provide their shield numbers to § 87(2)(b)	

### Case Summary

On September 6, 2018, § 87(2)(b) filed this complaint over the phone with IAB on behalf of her § 87(2)(b)-old son § 87(2)(b) and her § 87(2)(b)-old grandson § 87(2)(b).

On September 6, 2018, at approximately 6:45 P.M., § 87(2)(b) and § 87(2)(b)'s uncle § 87(2)(b) were walking on 2<sup>nd</sup> Avenue between 122<sup>nd</sup> Street and 123<sup>rd</sup> Street in Manhattan when PO Fernando Dominguez and PO Riguel Rodriguez of PSA 5 approached them and said § 87(2)(b)'s name. Both officers grabbed § 87(2)(b)'s arms and said he was under arrest before attempting to handcuff him. § 87(2)(b) held his arms in front of himself to avoid being handcuffed. Several more officers arrived on scene, including Det. Lorraine Marin of the Youth Services Division, and § 87(2)(b) was taken to the ground (**Allegations A-C, Force: § 87(2)(g)**). While § 87(2)(b) was on the ground, an unidentified officer allegedly pushed the left side of § 87(2)(b)'s face into the sidewalk, and another put their knee in his back; (**Allegation D, Force: § 87(2)(g)**). § 87(2)(b) attempted to get closer to § 87(2)(b) who tried to give § 87(2)(b) his cell phone. Det. Marin told § 87(2)(b) to back away or he would be arrested (**Allegation E, Abuse of Authority: § 87(2)(g)**). PO Dominguez also told § 87(2)(b) that he would be arrested if he did not back away from § 87(2)(b) (**Allegation F, Abuse of Authority: § 87(2)(g)**). Det. Marin also allegedly told § 87(2)(b) to stop recording the incident on his cell phone (**Allegation G, Abuse of Authority: § 87(2)(g)**). § 87(2)(b) was taken to the PSA 5 stationhouse, and § 87(2)(b) followed. § 87(2)(b) asked officers for their names and shield numbers, and allegedly none of them provided their information (**Allegations H and I, Abuse of Authority: § 87(2)(g)**).

No video footage of this incident was recovered.

### Findings and Recommendations

**Allegation (A) Force: In front of 2383 2nd Avenue in Manhattan, Police Officer Fernando Dominguez used physical force against § 87(2)(b)**

**Allegation (B) Force: In front of 2383 2nd Avenue in Manhattan, Police Officer Riguel Rodriguez used physical force against § 87(2)(b)**

**Allegation (C) Force: In front of 2383 2nd Avenue in Manhattan, Detective Lorraine Marin used physical force against § 87(2)(b)**

**Allegation (D) Force: In front of 2383 2nd Avenue in Manhattan, an officer used physical force against § 87(2)(b)**

In his testimony to the CCRB, § 87(2)(b) noted that he, § 87(2)(b) and § 87(2)(b) had been together at the Wagner NYCHA development for approximately two hours before they began walking to § 87(2)(b)'s home [BR 02]. PO Dominguez and PO Rodriguez approached and said § 87(2)(b)'s name, but did not make any other statements or issue any commands before grabbing § 87(2)(b)'s arms close to his wrist and telling him he was under arrest. § 87(2)(b) did not know why he was being arrested and tried to avoid being handcuffed by holding his arms in front of himself. He did not make any other movements while the officers attempted to handcuff him. One of the officers called for backup, and within minutes three marked vehicles arrived with approximately six officers, who were mostly white males from PSA 5 and one white female. An unidentified officer whom § 87(2)(b) could not describe grabbed § 87(2)(b)'s legs below the knee and pulled them backwards while another unidentified officer put their arms

around his waist from behind and pushed him forward. § 87(2)(b) landed on his front on the ground and flipped onto his back by moving his upper body. The officers flipped him back onto his stomach, and § 87(2)(b) continued moving and wiggling his legs, although he was not kicking. One of the officers pushed the left side § 87(2)(b)'s face into the concrete, and another put their knee in his back while others held his arms and legs. § 87(2)(b) noted that his father recorded video of the incident but was unaware of when the recording began. § 87(2)(b) was later informed that there were two bench warrants [BR 16] for his arrest and noted that he ultimately pleaded guilty to § 87(2)(b). § 87(2)(b) sustained pain to his jaw as a result of the incident but did not ask to go to a hospital.

§ 87(2)(b) only provided a short phone statement to the CCRB and stated that upon approach, PO Dominguez grabbed § 87(2)(b) around his chest, and PO Rodriguez grabbed his arm [BR 01]. Two female officers and one Asian officer approached. § 87(2)(b) was taken to the ground. Several officers fell on top of § 87(2)(b) and one of them twisted his leg at the ankle. § 87(2)(b) noted that he was recording the incident. § 87(2)(b) was uncooperative in providing the video to the investigation.

§ 87(2)(b) stated in his phone statement to the CCRB that PO Dominguez and PO Rodriguez immediately approached and tackled § 87(2)(b) [BR 03]. PO Rodriguez grabbed § 87(2)(b) with two hands while PO Dominguez grabbed § 87(2)(b)'s feet, and they all fell to the ground, with § 87(2)(b) landing on his back. PO Dominguez and PO Rodriguez told § 87(2)(b) that he was under arrest. The officers tried to roll § 87(2)(b) onto his stomach, but § 87(2)(b) asked to be cuffed in the front because of a shoulder issue. More officers arrived until ultimately approximately five officers were on top of § 87(2)(b). One officer placed a knee on § 87(2)(b)'s head, while another placed a knee on his back. One officer pushed § 87(2)(b)'s head onto the ground. § 87(2)(b) continued to twist and turn while on the ground, and at one point swung his arm away to avoid being handcuffed.

PO Dominguez testified to the CCRB that he and PO Rodriguez were patrolling on foot when he observed § 87(2)(b) and knew that § 87(2)(b) had two active supreme court bench warrants [BR 04]. PO Dominguez knew about § 87(2)(b)'s warrants from flyers provided by other precincts and agencies and had been aware of the warrants for several weeks. One warrant was for gun possession. PO Dominguez was familiar with § 87(2)(b) after seeing and speaking with him in the area several times but had never arrested him. PO Dominguez grabbed § 87(2)(b)'s arm and told him to put his hands behind his back. § 87(2)(b) flailed his arms and struggled for several minutes, at one point attempting to run away. § 87(2)(b) made several statements including, "Suck my dick," and "Get the fuck off me." PO Dominguez and PO Rodriguez bear hugged § 87(2)(b) and told him to give them his hands. PO Dominguez was tired after struggling with § 87(2)(b) for several minutes decided to take § 87(2)(b) to the ground to more easily handcuff him. § 87(2)(b) landed on his back with PO Dominguez on top of him. PO Dominguez placed one handcuff on § 87(2)(b) who continued to flail his arms and kicked PO Dominguez multiple times in the legs. PO Dominguez held § 87(2)(b)'s legs down by his ankles and shins to stop him from kicking. PO Rodriguez was holding § 87(2)(b) by his chest area and trying to flip him onto his front because § 87(2)(b) kept trying to stand up by pushing himself up with his hands. PO Dominguez did not recall § 87(2)(b) making any movements with his head. PO Dominguez did not make any contact with § 87(2)(b)'s head, nor did PO Rodriguez. Two other officers, including Det. Marin, were in the area but did not physically assist in handcuffing § 87(2)(b). One of the officers called for backup. PO Dominguez did not see any officers push § 87(2)(b)'s head onto the pavement. PO

Dominguez did not recall whether he put a knee on § 87(2)(b)'s back or whether he saw any other officer do so. § 87(2)(b) was ultimately placed in handcuffs, after which he stopped physically struggling and was picked up off the ground.

PO Rodriguez's testimony is consistent with that of PO Dominguez with the following exceptions [BR 06]. § 87(2)(b) saw the officers and began to walk away before PO Dominguez told him to stop and that he was under arrest. PO Rodriguez and PO Dominguez grabbed § 87(2)(b) by his arms. § 87(2)(b) began kicking at the officers and trying to run, and PO Dominguez told him to stop resisting. PO Rodriguez and PO Dominguez moved § 87(2)(b)'s arms behind his back, but § 87(2)(b) continued to resist. PO Rodriguez held § 87(2)(b)'s legs and left arm while PO Dominguez held § 87(2)(b)'s upper body and both officers took him to the ground, with both officers going to the ground as well. Both PO Rodriguez and PO Dominguez landed on their knees on the ground. § 87(2)(b) landed on his back and kicked PO Dominguez more than six times. PO Rodriguez controlled § 87(2)(b)'s legs to prevent him from kicking while also holding onto his left arm. PO Dominguez held onto § 87(2)(b)'s right arm. § 87(2)(b) continually tried to spit at PO Rodriguez and PO Dominguez but did not succeed in spitting on either of them. The officers did not try to gain control of § 87(2)(b)'s head to prevent him from spitting at them but turned his body until he was face down on the ground. PO Rodriguez did not push § 87(2)(b)'s face onto the ground, nor did he have any contact with § 87(2)(b)'s head or face and he did not see PO Dominguez do so. No other officers had any physical contact with § 87(2)(b).

Det. Marin's testimony to the CCRB was consistent with that of PO Dominguez and PO Rodriguez with the following exceptions [BR 05]. Det. Marin was working a paid detail when she heard individuals yelling and using profanity around the corner of the building. Det. Marin approached and saw PO Dominguez and PO Rodriguez attempting to handcuff § 87(2)(b) who was flailing one hand. Both PO Dominguez and PO Rodriguez were trying to hold § 87(2)(b)'s arms. Det. Marin assisted PO Dominguez in holding § 87(2)(b) against a gate and trying to take his hands so that he could be handcuffed. Det. Marin tried to take § 87(2)(b)'s right arm while PO Dominguez tried to take his left. Both PO Dominguez and Det. Marin told § 87(2)(b) to stop resisting, to which § 87(2)(b) replied with profanity. Det. Marin continued to assist PO Dominguez and PO Rodriguez in handcuffing § 87(2)(b) but they were unable to do so as § 87(2)(b) continued to flail his arms. After approximately a minute of struggling with § 87(2)(b), PO Dominguez, PO Rodriguez, and Det. Marin took him to the ground, with PO Dominguez holding § 87(2)(b)'s legs and Det. Marin holding his upper body. All four fell to the ground, with § 87(2)(b) on top of officers, after which § 87(2)(b) was physically compliant. Det. Marin held one of § 87(2)(b)'s arms while an officer held the other arm, and § 87(2)(b) was placed in handcuffs. Det. Marin did not push § 87(2)(b)'s face onto the ground, nor did she see any other officers do so. No officers placed a knee against § 87(2)(b)'s back. No other officers aside from Det. Marin, PO Dominguez, and PO Rodriguez had any physical contact with § 87(2)(b).

An AIDED report was prepared for PO Dominguez [NYPD 02]. Attached photos show bruises and lacerations to PO Dominguez's legs and knees.

NYPD Patrol Guide procedure 221-01 states that force may be used to ensure the safety of a member of service or a third person when it is reasonable to place a person in custody or prevent escape from custody [BR 08].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) Abuse of Authority: In front of 2383 2nd Avenue in Manhattan, Detective Lorraine Marin threatened to arrest § 87(2)(b)**

**Allegation (F) Abuse of Authority: In front of 2383 2nd Avenue in Manhattan, Police Officer Fernando Dominguez threatened to arrest § 87(2)(b)**

§ 87(2)(b) testified to the CCRB that while he was on the ground, § 87(2)(b) and § 87(2)(b) attempted to get closer to him, and at one point were standing within five feet of him [BR 02]. At least one of the officers told them to back up, or they would be arrested as well. § 87(2)(b) attempted to give § 87(2)(b) his cell phone, and one of the officers told § 87(2)(b) that if he took the phone, he would be arrested for having stolen property.

§ 87(2)(b) stated corroborated that § 87(2)(b) attempted to give his cell phone to § 87(2)(b) [BR 01]. PO Dominguez said that § 87(2)(b) could not take the phone because that would be robbery.

§ 87(2)(b) stated that a female officer told him and § 87(2)(b) to back away but did not state that any officers said they would be arrested [BR 03].

Det. Marin testified that a male hovered behind her until she could feel him against her back, which she noted was dangerous because she was not wearing a jacket and her gun, radio, and asp were exposed. Det. Marin told the male to step back because she did not know who he was, after which he stated that he was § 87(2)(b)'s father, identified by the investigation as § 87(2)(b). Det. Marin did not recall telling § 87(2)(b) that he would be arrested if he did not step back and did not recall hearing any other officer say so. She noted that § 87(2)(b) could have been arrested for interfering with § 87(2)(b)'s arrest, or obstruction of governmental administration.

PO Dominguez testified a male, whom PO Dominguez believed to be a family member of § 87(2)(b) was hovering over his back and was inches away [BR 04]. The male repeatedly stated, "Front cuff him." The male asked § 87(2)(b) where his phone was, and § 87(2)(b) attempted to shake out his pocket to give the male his phone. PO Dominguez told § 87(2)(b) he could not give out his property. § 87(2)(b) was ultimately able to hand his phone to someone. PO Dominguez did not recall telling the male that he could be arrested if he took the cell phone. PO Dominguez told the male to back away multiple times and ultimately put his hand on the male's chest and told him to back up. PO Dominguez told the male that he was obstructing an arrest and that he could be arrested if he did not back up. The male complied at that point. PO Dominguez did not hear any other officers tell anyone that they would be arrested if they did not back away.

New York State Penal Law §195.05 states that a person is guilty of obstructing governmental administration, when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public

servant from performing an official function by means of intimidation, physical force or interference [BR 09].

*People v Case*, 42 N.Y.2d 98 (1977) addresses which actions constitute obstruction of governmental administration and specifies that the interference must be, at least in part, physical [BR 10].

§ 87(2)(g)

**Allegation (G) Abuse of Authority: In front of 2383 2nd Avenue in Manhattan, Detective Lorraine Marin interfered with § 87(2)(b)'s use of a recording device.**

**Allegation (H) Abuse of Authority: At the PSA 5 stationhouse, officers refused to provide their names to § 87(2)(b)**

**Allegation (I) Abuse of Authority: At the PSA 5 stationhouse, officers refused to provide their shield numbers to § 87(2)(b)**

§ 87(2)(b) stated that, while at the scene of § 87(2)(b)'s arrest, Det. Marin told § 87(2)(b) to stop recording video of the incident or he would be arrested. After § 87(2)(b) was arrested, § 87(2)(b) and § 87(2)(b) went to the PSA 5 stationhouse, where they attempted to obtain the names and shield numbers of the officers who were at the scene, but they were refused [BR 01].

§ 87(2)(b) did not state in his phone statement that he went to the stationhouse with § 87(2)(b) [BR 03].

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first complaint to which § 87(2)(b) has been a party [BR 11].
- § 87(2)(b)
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- PO Dominguez has been a member of service for three years and this is the first CCRB complaint to which he has been a party.
- PO Rodriguez has been a member of service for one year and this is the first CCRB complaint to which he has been a party.

- Det. Marin has been a member of service for 13 years and this is the first CCRB complaint to which she has been a party.

## Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
  - On July 9, 2019, the Office of the New York City Comptroller confirmed that no Notice of Claim has been filed regarding this incident [BR 15].
  - § 87(2)(b)
  - § 87(2)(b) s OCA history was unavailable given that he was a minor until § 87(2)(b)
  - § 87(2)(b) has had no criminal convictions in New York since § 87(2)(b)
- [BR 13].

Squad No.: 3

Investigator: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_

Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_